

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BRIAN ZALEWSKI,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-21-00798-JD
)	
THE CITY OF CHICKASHA,)	
Oklahoma, a municipal corporation,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant City of Chickasha’s 12(b)(6) Partial Motion to Dismiss (“Motion”). [Doc. No. 3]. The Motion challenges Plaintiff Brian Zalewski’s *Burk* tort claim alleged in his original Complaint [Doc. No. 1-2]. Plaintiff responded that “based on Defendant’s representation that [he] is not an at-will employee, [he] agrees that he cannot assert a *Burk* tort action.” [Doc. No. 6].

Plaintiff thereafter timely filed an Amended Complaint under Federal Rule of Civil Procedure 15(a)(1)(B) eliminating the contested claim. [See Doc. No. 7]. Plaintiff’s Amended Complaint “supersedes the original and renders it of no legal effect.” *Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991); see *Predator Int’l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1180–81 (10th Cir. 2015); *Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir. 2007). Thus, the Motion is moot.

IT IS THEREFORE ORDERED that Defendant’s Partial Motion to Dismiss [Doc. No. 3] is DENIED AS MOOT and without prejudice. Defendant’s response to the Amended Complaint is due within the time frame under Rule 15.

IT IS SO ORDERED this 21st day of September 2021.

A handwritten signature in black ink, appearing to read "Jodi W. Dishman", written over a horizontal line.

JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE